S. HRG. 100-721

NOMINATION OF LAWRENCE J. JENSEN

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF LAWRENCE J. JENSEN TO BE GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY

AUGUST 8, 1988

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NOMINATION OF LAWRENCE J. JENSEN

MONDAY, AUGUST 8, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 2:18 p.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Stafford, and Mikulski.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Good morning, ladies and gentlemen. Welcome to this hearing on the nomination of Lawrence Jensen to be General Counsel of the Environmental Protection Agency.

Members of the committee remember that Mr. Jensen appeared before us some three years ago when he was nominated to be Assistant Administrator for Water at EPA. In that position he has played a key role in implementing the new amendments to the Clean Water Act and in shaping new programs addressing groundwater protection and wetlands.

Mr. Jensen's legal experience includes work as a trial lawyer at the Department of Justice; several years as Associate Solicitor at the Department of the Interior, and over two years in private practice.

Are there other Senators that would like to make opening statements at this time?

[No response.]

Senator BURDICK. Mr. Jensen, would you like to make a statement?

STATEMENT OF LAWRENCE J. JENSEN, NOMINEE TO BE GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY

Mr. JENSEN. Thank you, Senator Burdick. I appreciate very much your efforts in hearing this nomination so expeditiously. I appreciate that very much.

As you noted, I've had the pleasure of appearing before this committee many times in the past three years as the Assistant Administrator for Water, so my statement this morning will be quite brief. But there are just a couple of things I would like to mention, if I may.

First, I recall that at my confirmation hearing three years ago I noted how deeply impressed I had been with the seriousness and

the nobility of the tasks faced by EPA, and also with the devotion and ability of those who work there. My experience at the EPA since then as the Assistant Administrator for Water has served only to strengthen those impressions, and I want to tell you because of your keen interest in the agency I am sure I will view my years of service at EPA as one of the great privileges of my life.

Second, while in the Office of Water, as you noted, I had the good fortune to preside over the implementation of both the 1986 amendments to the Drinking Water Act and also the 1987 amendments to the Clean Water Act. I thought I'd take a moment to report to you that the implementation process for those amendments is well on the way and should begin very soon to produce the results of water quality improvement that you envisioned when you fashioned those amendments.

Finally, let me say that although I leave the Water Office with genuine reluctance because I enjoyed so very much my time there, I am eager to assume the responsibilities of General Counsel at EPA. And if the Senate sees fit to confirm me in that position, I certainly pledge my very best efforts in carrying out the responsibilities of that office.

One of the rewards of that position as General Counsel for me will be the opportunity to work even more closely with Lee Thomas as the Administrator, serving as his principal legal counselor.

I want to say just in closing that I think one of the great untold stories of the Reagan Administration is the dedication, skill, and the success with which Lee Thomas has managed the nation's environmental programs. Thank you.

If you have any questions I'd be happy to respond to them.

Senator BURDICK. We have a standing practice of asking appointees coming before the committee to assure us that they will appear before the committee when requested. Do you agree to appear before any committee of the Senate, the House of Representatives, or the United States Congress if asked to do so?

Mr. JENSEN. Certainly.

Senator BURDICK. Do you have any properties or hold any positions which would cause a conflict of interest if you are confirmed in this position by the EPA?

Mr. JENSEN. No, I do not.

Senator BURDICK. The agency has made some progress in implementing the Clean Water Act. Members of this committee, however, are especially concerned about one aspect of this effort. The act required the agency to publish sewage sludge regulations by August of last year. The regulations are not yet published and may not be published for several years. What has been the delay in publishing these regulations for which there is a clear statutory deadline?

Mr. JENSEN. Well, there are two principal reasons. One is, as you well know, that the complexity of that regulation is unique at the agency. We are talking about having to devise regulations for dozens of different contaminants and to do that over a number of different environmental pathways that they might travel.

I can tell you, having had responsibility for that regulation in the Office of Water, that it seems to defy our very best efforts because of its complexity, particularly with our new awareness of the

effort to address the cross media implications of what we are doing. The sludge rule touches each of the programs in the agency and seeking to work out a consistent regulation that doesn't cause problems in the other programs, has been a very difficult task.

The second thing that contributed to the delay recently was the decision form the D.C. Circuit Court of Appeals in the vinyl chloride case. Although that does not deal directly with the Clean Water Act, we felt that it might have some relevance to how we were proceeding in developing that regulation, and we did take time to thoroughly review the implication of that decision in light of the sludge regulation.

We have been sued on the sludge regulation, and are currently negotiating with the plaintiffs in that case, a court approved schedule, and I can assure you that we're working just as hard and as fast as we can to get that rule out. But it is enormously complex.

Senator BURDICK. I hope that if confirmed by the Senate you'll remember that we are serious when we set deadlines in statutes, and that you'll do all you can to assure prompt action on these regulations.

Mr. JENSEN. I certainly will.

Senator BURDICK. What do you see as the major issue facing you as General Counsel at EPA?

Mr. JENSEN. I think there are two areas, at least in the short term, that will demand my attention, principally, the air program. As you well know, Congress is currently seeking to put together a series of amendments to the Clean Air Act and as we seek to work with Congress in their efforts to do that and also at the same time operate the program in the absence of any further Congressional direction we are finding that we're spending a great deal of time on the air issues.

I think the other area, in terms of the amount of time that it seems to demand of me, is the hazardous waste area. As we get into the heart of the implementation of the amendments to Superfund we are finding that that particular set of issues demands a great deal of attention from the Office of General Counsel. So I would say that those two areas are the ones that I foresee having to devote most of my time and energy to in the next several months.

Senator BURDICK. The Senator from Maryland?

Senator MIKULSKI. Thank you, Mr. Chairman.

Mr. Jensen, you should be aware that one of the reasons that the room is not jam-packed is that we are continuing our discussion on the Nuclear Regulatory Commission, and many of the Senators from this committee are over there participating in this debate.

I knew you when you were with the water office.

Mr. JENSEN. That's true.

Senator MIKULSKI. And now you are moving up to General Counsel. First of all, I am going to vote for your nomination, and will vote for your confirmation on the floor. I know that some years ago when I was over in the Merchant Marine and Fisheries Committee in the House, and we were dealing with the very complex issue of ocean incineration, you and I had some very rocky times together. I think we've all learned a lot from where we were then, and I'm sure that there was miscommunication on both sides.

As I said, I know I've learned a lot, and I think you learned a lot from me. In this job though, you are going to have a tremendous responsibility in terms of the issues. Mr. Lee Thomas is going to need all the help that he can get; and I think that you learned a lot from him. I want you to know that I regard him as one of the most competent EPA Administrators we have had.

So, Mr. Chairman, that's all I wanted to say. I really don't have questions.

You've been with EPA now four years?

Mr. JENSEN. Three years, Senator.

Senator MIKULSKI. Three years?

Mr. JENSEN. Yes.

Senator MIKULSKI. That's right, I was getting started in Oceanography, and you were getting started at the agency.

Mr. JENSEN. Let me just say that I appreciate very much your attendance, and I did learn a great deal from you and from working that issue of ocean incineration. I trust that the outcome of that issue was one that was satisfactory to you.

Senator MIKULSKI. Well, we've got these enormous problems now and Mr. Reagan is going to be in office for five more months. We've got syringes and all sorts of garbage on our beaches and Superfund sites. I would like to move your nomination as quickly as we can because we have a lot of work that we have to try to get done between now and the end of the Congress.

Mr. JENSEN. That's right. I appreciate that.

Senator BURDICK. The ranking member of the Committee would like to ask some questions. Senator Stafford.

Senator STAFFORD. Right on cue.

Senator BURDICK. You're on, sir, you're on.

Senator STAFFORD. Like Sherman, Mr. Chairman, at one of the battles of the Civil War, the battle was raging, and I was twenty miles away.

I am very glad to be here at the confirmation hearing for Mr. Jensen. I assume Mr. Jensen has completed his opening statement?

Senator BURDICK. Yes, he has.

Senator STAFFORD. And I assume his family is here with him?

Mr. JENSEN. Yes.

Senator STAFFORD. Did they have the chance to be introduced?

Senator BURDICK. They have been met privately.

Senator STAFFORD. I think it would be nice if Mr. Jensen had a chance to introduce his family for the record.

Mr. JENSEN. I'd be pleased to do that. Thank you, Senator Stafford. This is my wife Terri——

Senator STAFFORD. How do you do?

Mr. JENSEN. And my three daughters are here with me today. This is Sarah, Jennifer, and at the far end here, this is Emily. And just coincidentally, I am very fortunate to have visiting me, from Utah this week my sister, her husband, and their three daughters: Paul and Mary Anne Sheffield, and their daughters, Kristin and Erika and Allison.

Senator STAFFORD. All I can say, Mr. Jensen, as one of the parents of four daughters and no sons, is that we got into the same pattern as your family, and we like it.

Mr. JENSEN. So do I.

Senator STAFFORD. Let me just ask you one or two questions about "Executive Order 12630: Governmental Actions and Interference with Constitutional Protected Property Rights." Former General Counsel of EPA Frank Blake in a letter commenting on the proposed order stated, "The proposed order is at best unnecessary and wasteful, and at worst counterproductive." That is Executive Order 12630.

Notwithstanding that criticism the Administration issued the order. I'd like to know first if you're familiar with it, how you view the order, and whether you agree with Mr. Blake's criticism.

Mr. JENSEN. I am familiar with it. The order was issued just before I assumed my duties as Acting General Counsel. And the process that has been followed since then, Senator Stafford, has involved me in several hour-long discussions at the Department of Justice as we've tried to understand what the implications of the order might be for the EPA.

I'm pleased to report that the Department of Justice has allowed us to develop a set of supplemental guidelines which we just completed in sort of a final draft from, and which are now at Justice. In those guidelines we were able to adapt the order, I think very well, to the requirements of the Agency and the unique responsibilities that it has.

So, I'm confident that if those supplemental guidelines are approved, we will have a very workable process established that I think will be constructive as we review the impact of the agency's programs in light of the Fifth Amendment.

Senator STAFFORD. All right.

Can you tell us what the agency has done to date to comply with the requirements of this order and what your role may be—and that includes your decision—about agency compliance with it?

Mr. JENSEN. Yes. The Attorney General's guidelines did not actually go into effect until July. The Department of Justice has accorded the agencies the opportunity to develop their own supplemental guidelines. Until such time as those are approved we have not taken any formal actions in terms of reviewing EPA regulations under the order. At such time that we begin that process the General Counsel will be involved in reviewing all of the significant decisions that the agency must make. The Takings Officer, however, will be the Assistant Administrator for Policy at the agency and the initial analysis will be put together by that office and then reviewed by the General Counsel.

Senator STAFFORD. One last question. Could you comment specifically on whether the agency will attempt to estimate the potential cost to the Government of proposed regulations "in the event that a court later determines that the actions constituted a taking" and if the answer is yes, how those estimates might be made?

Mr. JENSEN. I can foresee some situations where we might do that type of analysis. We have attempted in the supplemental guidelines to make that the exception rather than the rule and because we have had no experience with it yet we are still very much in the formative stages of deciding how such and analysis might be done. I really am not able to give you detail about how that sort of analysis might proceed at the agency.

Senator STAFFORD. Well, thank you very much. I don't I have any other questions.

Mr. Chairman, speaking only for myself, I think the Senator from Vermont is prepared to vote for Mr. Jensen's confirmation at this point.

Senator MIKULSKI. Mr. Chairman, if I may?

One other final point, Mr. Jensen. Are these your daughters in the front row? We were so intent in talking about the issues.

Mr. JENSEN. Well, three of them are, and three of them are my nieces, the three in the similar dresses. Emily, Jennifer, and Sarah are my daughters. And the three here, Erika, Allyson, and Kristin are my nieces, and they are visiting D.C. this week and they wanted to see what a confirmation hearing is like. And I promised them that if they came that you'd be nice to me.

Senator MIKULSKI. Well, actually, that did help.

Actually, we'd like to welcome your daughters and your wife to the proceedings. My father had three daughters and we are very grateful for the way he saw to us in terms of the home he gave us, the name he gave us, and the education he gave us. I'm glad that you brought them to the hearing and we're sorry that it's not as exciting as they might envision on TV but I'm sure you're happy that it is dull and benign.

Mr. JENSEN. I told them that I would be very pleased if it was the dullest hearing ever.

Senator BURDICK. Not to be outdone, I have three daughters, too.

Mr. JENSEN. Okay.

Senator BURDICK. And an additional son, of course.

Thank you, Mr. Jensen.

Mr. JENSEN. Thank you.

Senator BURDICK. We'll consider this nomination at a meeting of the full committee in the near future.

Mr. JENSEN. I appreciate that very much.

Senator BURDICK. There may be written questions from other members of the committee and I hope that you will respond to these questions promptly.

If there is no further business, this meeting of the committee is adjourned.

[Whereupon, at 2:38 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Responses from Mr. Jensen to a committee questionnaire follows:]

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: JENSEN (Last) Lawrence (First) Jeremy (Middle)

Position to which nominated: EPA Asst. Administrator (General Counsel) **Date of Nomination:**

Date of birth: 17 1 50 (Day) (Month) (Year) **Place of birth:** Salt Lake City, Utah

Marital status: Married **Full name of spouse:** Terri Fisher Jensen

Name and ages of children:

Jennifer	10
Sarah	8
Emily	5

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Yale University	67-69		
University of Utah	71-73	B.A.	'73
Brigham Young Univ.	73-76	J.D.	'76

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Trial Attorney - U.S. Dept. of Justice, Wash., D.C. 76-79

Associate - Jones, Waldo & Holbrook, Salt Lake City, Ut. 79-81

Associate Solicitor - U.S. Dept. of the Interior, Wash., D.C., 81-85

Asst. Administrator for Water - U.S. EPA, Wash., D.C. 85-88

Employment record—Continued

Act'g General Counsel, U.S. EPA, Wash., D.C., April 1988 - Present

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

National Merit Scholar

Stephen L. Richards Scholarship (Full Merit Scholarship to Law School)

J. Reuben Clark Scholar (Top 10% of Law School Class)

U.S. Attorney General's Honors Program

Superior Service Award, U.S. DOI

Outstanding Alumnus, BYU Law School 1987

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
None		

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have almost seven years experience as a government attorney litigating and counseling on all aspects of Federal statutory programs. Four of those years were spent supervising legal staffs with as many as 35 attorneys. I have served for seven years as a political appointee at a policy-making level involved in natural resource management and environmental issues. For two and one-half of those years, I served as the Assistant Administrator for Water at EPA. I have been serving since April in an acting capacity as EPA General Counsel.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

Associate Solicitor, U.S. DOI - left to accept appointment at EPA

Asst Administrator for Water, U.S. EPA - left to serve as Act'g General Counsel, EPA

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None

3. Are any assets pledged? (Add schedule).

Personal residence is mortgaged

4. Are you currently a party to any legal action?

No - other than in my official capacity

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interes , with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

N/A

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

Life Member, Republican Party

Campaign Staff, Republican Nominee for Governor of Utah (Bob Wright) 1980

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

None

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

No

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

Lawrence J. Jensen) ss. being duly sworn, hereby states that he/~~she~~ has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Lawrence J. Jensen

Subscribed and sworn before me this 29TH day of JULY , 1988.

Richard Kratofil
Notary Public

My Commission Expires Dec. 14, 1988.